

REMARKS

Claims 3, 4 and 6-9 are pending in this application. By this Amendment, claims 3, 4 and 6-8 are amended. Claim 9 is added. The amendments and added claim introduce no new matter. Claims 1, 2, and 5 are canceled without prejudice to, or disclaimer of, the subject matter recited in those claims. Reconsideration of the application based on the above amendments and the following remarks is respectfully requested.

Applicants appreciate the courtesies shown to Applicants' representatives by Examiner Dunn in the June 29, 2006, personal interview. Applicants' separate record of the substance of the interview is incorporated into the following remarks.

I. The Claims Are Supported By The Specification And Are Definite

The Office Action, in paragraphs 3 and 4, rejects claims 1-8 under 35 U.S.C. §112, first paragraph. These rejections are respectfully traversed.

The Office Action asserts, that claims 1-8 fail to comply with the written description and enablement requirements. Specifically, the Office Action asserts that the feature of a force at which the lower limb restraining device is moved in an occupant lower limb direction is smaller than a force at which the lower limb of the occupant is restrained, is not adequately disclosed.

At the outset, Applicants note that this language pertains to only claims 1 and 2. The cancellation of claims 1 and 2 renders these rejections moot. Claims 3, 4 and 6-8 include a feature wherein a force at which the lower limb restraining member is moved in the occupant lower limb direction by the driving device is smaller than a force at which the stopping mechanism restrains the at least one lower limb of the occupant. This feature is adequately disclosed in at least paragraph [0050] of the disclosure as originally filed. Specifically, the inclusion of a stopping mechanism allows a force at which the lower limb restraining member is moved in the occupant lower limb direction to be lowered.

Applicants' representatives presented this argument to the Examiner during the personal interview. The Examiner acknowledged that the language referenced in the Office Action was different than that contained in claim 3 and agreed to reconsider this rejection upon submission of a formal response.

The Office Action, in paragraph 6, rejects claim 4 under 35 U.S.C. §112, second paragraph, as being indefinite. This rejection is respectfully traversed.

The Office Action asserts that there is insufficient antecedent basis for the feature of "the main body portion" contained in claim 4. Claim 4 is amended to obviate the rejection.

Accordingly, reconsideration and withdrawal of the rejection of claims 3-4 and 6-8 under 35 U.S.C. §112 first and second paragraphs, are respectfully requested.

II. The Claims Recite Allowable Subject Matter

The Office Action, in paragraph 8, rejects claims 1-4 under 35 U.S.C. §103(a) over DT 25 37 212 in view of U.S. Patent Application Publication No. 2004/0046377 to Meduvsky et al. The cancellation of claims 1 and 2, and the amendment of claim 3 to incorporate subject matter from now-canceled claim 5, which was not rejected over this combination of references, renders this rejection moot.

The Office Action, in paragraph 9, rejects claim 1 under 35 U.S.C. §103(a) over JP 04-197847 to Yoshibumi. The cancellation of claim 1 renders this rejection moot.

The Office Action, in paragraph 10, rejects claims 2-5, 7 and 8 under 35 U.S.C. §103(a) over Yoshibumi in view of JP 2000-326825 to Hironori; and in paragraph 11, rejects claims 2-6 under 35 U.S.C. §103(a) over Yoshibumi in view of U.S. Patent No. 6,910,558 to Wang et al. (hereinafter "Wang"). These rejections are respectfully traversed.

Yoshibumi teaches a passenger restraining device for a vehicle comprising at least a knee protector device arranged under a dash board and supported via a pair of air cylinders and link brackets, the air cylinders being actuated via a controller in a case where vehicle

deceleration is detected by, for example, a collision detecting sensor exceeding a predetermined value (Abstract).

The Office Action concedes, at paragraphs 10 and 11, that Yoshibumi fails to teach a stopping device considered to correspond to the stopping mechanism of the pending claims. The Office Action, relies on Hironori, to make up for this shortfall in Yoshibumi. The Office Action asserts that Hironori teaches an occupant restraint device comprising a one way lock mechanism. The Office Action concludes that it would have been obvious to one of ordinary skill in the art to modify Yoshibumi with the teaching of Hironori to provide a lock device on a knee bolster in order to better support the occupant. This analysis fails for at least the following reason.

Hironori teaches a lock mechanism (9) as part of unit (8) that is applied to an attachment of the seatbelt (see Figs. 7 and 8). The mechanism recited in the pending claims is not connected to the seatbelt, nor is there any suggestion of a need for a locking seatbelt portion. One of ordinary skill in the art would not have been motivated, therefore, to combine the teachings of Hironori with Yoshibumi as suggested, to apply the disclosed one way lock mechanism of Hironori to the occupant protection apparatus of Yoshibumi, for at least the reason that the portions to which the one way lock mechanism are applied are separate and distinct.

During the personal interview, the Examiner referenced Fig. 2 of Hironori as providing motivation for the combining of the locking mechanism of Hironori with the lower limb restraining member of Yoshibumi. However, even assuming that Fig. 2 of Hironori discloses a submarine bolster attached to a one way lock mechanism, there is insufficient motivation in the prior art to combine such a mechanism with the knee protector device disclosed in Yoshibumi in order to restrain the lower limbs of the occupant. Restraining movement under the lapbelt and through the seat, i.e, submarining, is a different phenomenon

with different physiological complications than restraining a lower limb in the forward direction by actively filling the void in front of the lower limbs. The purported submarine bolster is intended to prevent the submarine effect of the occupant sliding beneath the lapbelt. In this regard, it would necessarily act upon a point of the body that is not flexible at the hip joint. Simply restraining the lower limbs from moving in the direction of the bolster would not prevent the submarine effect. As such, the method of operation of the device in Hironori is not one that would logically commend itself to the specific problems contemplated by the present subject matter. In other words, it would not be obvious to one of ordinary skill in the art to combine a device that restrains the buttocks of an occupant via a bar inside a seat with one restraining the forward motion of lower limbs from the forward direction.

Rather, Applicants assert that the Office Action's combination of these references is based on improper hindsight reasoning. The only motivation cited by the Examiner to modify Yoshibumi with the teachings of Hironori would be to better support the occupant. However, the Examiners fail to point to any support for this (1) in the prior art references themselves; (2) the knowledge of those of ordinary skill in the art that certain references, or disclosures in those references, are of special interest or importance in the field; or (3) from the nature of the problem to be solved, leading inventors to look to references relating to possible solutions to that problem. See *Ruiz v. A.B. Chance Co.*, 234 F.3d 654, 665 (Fed. Cir. 2000). Indeed, the Court has noted that the temptation to engage in impermissible hindsight is especially strong with seemingly simple mechanical inventions. This is because combining prior art references without evidence of such a suggestion, teaching or motivation simply takes the inventors disclosure as a blueprint for piecing together the prior art to defeat patentability - the essence of hindsight. See *Teleflex v. KSR Int. Co.*, 119 Fed.Appx. 282 (Fed. Cir. 2005). The Federal Circuit's analysis of *Teleflex* is illuminating in this regard. In that case, the Federal Circuit recognized that the mere fact that a patent suffers from a problem, does not make the

combination of references to address that problem obvious. Similarly, assuming Yoshibumi suffers from a lack of support to the occupant, which Yoshibumi does not suggest, does nothing to explain how that would have specifically motivated one skilled in the art to attach the stopping mechanism of Hironori with the occupant protection device of Yoshibumi. Indeed, for the reasons discussed above, solving the problem of restraining the lower limbs of an occupant in a forward direction does not provide sufficient motivation to combine a reference drawn to prevent submarining through a seat. To reiterate though, Yoshibumi does not suggest suffering from the problem of a lack of restraining force to begin with. As such, Applicants assert that the combination of these references has been achieved only by impermissible hindsight reasoning using Applicants' disclosure as a template.

The Office Action, in paragraph 11, also attempts to address the shortfall in the application of Yoshibumi by relying on Wang. The Office Action asserts that Wang teaches a self locking mechanism for a telescoping column comprising a one way ball lock and that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Yoshibumi with the teachings of Wang to provide a lock device on the knee bolster in order to better support the occupant. This assertion is incorrect.

First, in the self locking mechanism of Wang, because the outer tube 38 and the ramp portion 96 can be deformed, the inner tube 48 can be retracted by the deformation amount (see column 6, lines 37-49). Further, the self locking mechanism of Wang contemplates extending in order to increase the stroke for absorbing energy. Thus, the restraining force provided by that mechanism would not inherently meet the requirement of providing a restraining force larger than the driving force in all circumstances. In other words, the extent to which Wang can be considered a locking device varies in relation to the extension. Likewise, the restraining force of the device in Wang varies in accordance with the magnitude of an impact force. In this regard also, the device would not be suitable for providing a larger

restraining force than the driving force in all circumstances. Claim 3 recites a one way lock mechanism, a device that allows travel in only one direction without the variations or precursor conditions present in the Wang device.

Second, Wang does not teach a one way ball lock, as is positively recited in claim 6. The one way lock disclosed in Wang uses a plurality of cylinders 80. These cylinders are intended to increase the area over which the force is distributed by elongating the contact area. Replacing these cylinders with spheres would be contrary to that purpose. Thus, Wang cannot be considered to teach, or to have reasonably suggested, the use of balls in a locking mechanism.

Third, Wang does not teach the cylinders moving into a space that remains following the movement of the lower limb restraining device, in accordance with the size of the space, as is also positively recited in claim 6.

Applicants' representatives presented these arguments regarding Wang to the Examiner during the personal interview. The Examiner did not rebut the foregoing features attributed to Wang and agreed to reconsider the application of Wang upon submission of a formal response.

Claim 9 is added to capture the feature of a shock absorbing member provided on an occupant side surface of the lower limb restraining member. This feature is neither taught, nor reasonably suggested, by the applied prior art references. Specifically, Yoshibumi discloses a knee protector device 5 that extends a surface layer 45 toward the legs of the passenger. No shock absorbing member is evident.

For at least these reasons, the applied prior art references cannot reasonably be considered to teach, or to have suggested, the combination of all of the features recited in independent claim 3. Additionally, claims 4 and 6-8 are also neither taught, nor would they have been suggested, by the applied prior art references for at least the respective dependence

of these claims directly or indirectly on independent claim 3, as well as for the separately patentable subject matter that each of these claims recites.

III. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 3, 4 and 6-9 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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